

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Moss	Team: Squad #6	CCRB Case #: 201908371	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/20/2019 4:00 PM	Location of Incident: 394 4th Avenue	Precinct: 78	18 Mo. SOL 3/20/2021	EO SOL 11/4/2021	
Date/Time CV Reported Mon, 09/23/2019 10:59 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/23/2019 10:59 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alex Merizalde	28183	950881	078 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Monet Allen	25198	966933	078 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Alex Merizalde	Abuse: Police Officer Alex Merizalde frisked § 87(2)(b)	
B.POM Alex Merizalde	Abuse: Police Officer Alex Merizalde searched § 87(2)(b)	
C.POM Alex Merizalde	Abuse: Police Officer Alex Merizalde refused to provide his name to § 87(2)(b)	
D.POM Alex Merizalde	Abuse: Police Officer Alex Merizalde failed to provide § 87(2)(b) with a business card.	
§ 87(4-b) § 87(2)(g)		

### Case Summary

§ 87(2)(b) filed this complaint over the phone with the CCRB on September 23, 2019.

On September 20, 2019, at approximately 4:30 p.m., PO Alex Merizalde and PO Monet Allen from the 78<sup>th</sup> Precinct responded to § 87(2)(b)'s 911 call regarding a stolen phone at 394 4<sup>th</sup> Avenue in Brooklyn. PO Merizalde frisked § 87(2)(b)'s bag to locate the phone (**Allegation A: Abuse of Authority** – § 87(2)(g)) and he allegedly searched it as well (**Allegation B: Abuse of Authority** – § 87(2)(g)). PO Merizalde allegedly refused to provide § 87(2)(b) his name (**Allegation C: Abuse of Authority** – § 87(2)(g)) and he did not give her his RTKA business card (**Allegation D: Abuse of Authority** – § 87(2)(g)). PO Merizalde did not have any business cards on his person during the incident (**Allegation E:** § 87(2)(g), § 87(4-b)). The officers did not arrest § 87(2)(b) or give her any summonses.

The investigation obtained video footage of the incident from both officers' body-worn cameras (**Board Review 1 and 2**).

### Findings and Recommendations

#### **Allegation A – Abuse of Authority: PO Alex Merizalde frisked § 87(2)(b)**

The following facts are undisputed: PO Merizalde and PO Allen responded to § 87(2)(b)'s 911 call at the U-Haul Storage Facility located at 394 4<sup>th</sup> Avenue in Brooklyn. § 87(2)(b) told the officers that someone stole her phone. She did not know who stole it or remember where she last saw it. This led the officers to believe that § 87(2)(b) misplaced the phone. The officers briefly looked for it in the area outside § 87(2)(b)'s storage unit. PO Merizalde touched § 87(2)(b)'s plastic bag, which hung on the door of her storage-unit. § 87(2)(b) did not give PO Merizalde permission to touch her possessions. She asked him to stop, and he did.

§ 87(2)(g) PO Merizalde testified that he briefly placed his hand on the plastic bag only to ask § 87(2)(b) if she had already searched it for her phone. § 87(2)(b) meanwhile, testified that PO Merizalde frisked, squeezed, and tossed the plastic bag in order to find the phone. PO Allen's testimony largely corroborated § 87(2)(b)'s account. Specifically, PO Allen testified that PO Merizalde frisked the plastic bag to locate the phone. Furthermore, footage from PO Allen and PO Merizalde's body-worn cameras showed § 87(2)(b) say that her possessions were manhandled, and PO Allen said she interpreted that comment as a reference to PO Merizalde's actions.

§ 87(2)(b) also testified that PO Merizalde frisked and squeezed other bags on the same door hook, including her purse. PO Merizalde said he touched only one bag on the door, and PO Allen remembered him touch only one. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Merizalde and PO Allen both said they suspected § 87(2)(b) of no criminality, and neither articulated any safety concern associated with § 87(2)(b) or her bags.

A police officer cannot frisk a bag or item of personal property unless the officer has a reasonable suspicion that the person is armed and dangerous and that the bag may contain a weapon within the person's reach. NYPD Patrol Guide 212-11 (**Board Review 3**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Abuse of Authority: PO Alex Merizalde searched § 87(2)(b)**

§ 87(2)(b) testified that PO Merizalde used his index finger to poke around in her plastic bags as they hung on her storage-unit door. She said that his hand entered the bags completely. PO Merizalde and PO Allen both asserted that PO Merizalde’s hands never entered any of the bags.

As § 87(2)(g)

§ 87(2)(g)

**Allegation C – Abuse of Authority: PO Alex Merizalde refused to provide his name to**

§ 87(2)(b)

PO Merizalde testified that he verbally provided § 87(2)(b) his name at least once and possibly twice. PO Allen did not remember if PO Merizalde provided § 87(2)(b) his name.

In her sworn statement, § 87(2)(b) stated that she never asked PO Merizalde for his name because she knew it would appear on the complaint form. In a follow-up call, she stated that she did in fact ask PO Merizalde for his name, and that he never verbally provided it. She said that she could see PO Merizalde’s name on his shield, but that both officers refused to provide her with anything to write the name down with.

The BWC footage did not capture § 87(2)(b) ask for PO Merizalde’s name, nor did it depict PO Merizalde verbally provide his name.

§ 87(2)(g)

**Allegation D – Abuse of Authority: PO Alex Merizalde failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) PO Merizalde, and PO Allen testified that the officers did not provide § 87(2)(b) with any business cards. All three agree that § 87(2)(b) did not ask for one, and that the officers did not arrest her or issue her any summonses. Footage from the officers’ body-worn cameras, which showed the conclusion of the interaction, confirmed that § 87(2)(b) did not ask for a business card and that the officers did not provide her with one. Neither the officers nor § 87(2)(b) alleged that they had any more contact with one another following the portion of the incident captured on BWC.

PO Merizalde said that he was generally equipped with business cards at the time, but that he did not have any on him during this specific interaction. He did not recall why he had no cards on his person. He further stated that he did not believe he had to provide a card in this situation. He said his understanding was that officers must provide that card only when they offend or curse at civilians.

As PO Merizalde did not believe he had to provide § 87(2)(b) with a business card, the investigation determined that he did not state his name, shield number, and command in an attempt

to provide her with the verbal equivalent of one.

Officers must provide civilians with business cards at the conclusion of law enforcement activities that do not result in arrests or summonses. NYC Administrative Code §14-174 (**Board Review 4**). As defined by the code, law enforcement activities include frisks. If an officer does not have an adequate number of pre-printed business cards or hand-written cards, he must provide his name, shield number, and command verbally, and allow the civilian sufficient time to record that information.

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

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#### **Civilian and Officer CCRB Histories**

- § 87(2)(g)
- PO Merizalde has been an officer for eight years, and this is the first CCRB complaint in which he has been a subject.
- § 87(2)(b) has been a party to two other CCRB complaints. § 87(2)(b) (**Board Review 6**).

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- The investigation has requested but not yet received records from the New York City Office of the Comptroller related to Notice of Claims filed by § 87(2)(b)

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date